

## **Title 18. State Board of Equalization**

### **Notice Is Hereby Given**

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to promulgate Regulation 1603, *Taxable Sales of Food Products* in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on March 20, 2007. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received March 20, 2007.

### **Informative Digest/Policy Statement Overview**

Current law: Revenue and Taxation Code (RTC) section 6011, subdivision (b)(1) and section 6012, subdivision (b)(1) provide that the total amount of the sale price of tangible personal property includes any services that are part of the sale. Regulation 1603, *Taxable Sales of Food Products*, subdivision (g) provides that amounts designated as service charges added to the price of meals are part of the selling price of meals and accordingly must be included in the retailer's gross receipts subject to tax even though such service charges are made in lieu of tips and are paid over by the retailer to employees.

Proposed Regulation 1603 is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code sections 6011 and 6012. The regulation proposed by Staff recommends that subdivision (g) of Regulation 1603 be expanded to clarify the current application of tax, as follows:

- An amount, whether designated as a tip, gratuity, or service charge, is optional and not subject to tax when it is added to the bill by the customer or otherwise left by the customer in payment over and above the actual amount due the retailer.
- An amount, whether designated as a tip, gratuity, or service charge, is presumed to be mandatory and subject to tax when added to the bill by the retailer. Amounts negotiated between the retailer and the customer in advance of a meal or events are mandatory. A statement printed on a menu, advertisement or a brochure advising the customer that a tip, gratuity, or service charge will or may be added to the bill when a group of people exceeds a specified number is evidence that the charge is mandatory and part of the gross receipts from the sale of the meal, food, or drinks. As such, it is subject to tax.

Subdivision (g) would also incorporate and replace the provisions of current subdivision (h)(3)(E) to further clarify that the above provisions apply to retailers selling food and beverages, including restaurants, hotels, caterers, boarding houses, soda fountains, drive-ins, and similar establishments.

### **Cost To Local Agencies And School Districts**

The State Board of Equalization has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing

with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

### **Effect On Business**

Pursuant to Government Code section 11346.5(a)(7), the State Board of Equalization made an initial determination that the adoption of Regulation 1671.1 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

### **Cost Impact On Private Person Or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Significant Effect On Housing Costs**

No significant effect.

### **Federal Regulations**

Proposed Regulation 1603 has no comparable federal regulations.

### **Authority**

Section 7051 Revenue and Taxation Code.

### **Reference**

Sections 6011 and 6012 Revenue and Taxation Code.

### **Contact**

Questions regarding the substance of the proposed regulation should be directed to Mr. Cary Huxsoll, Tax Counsel, telephone (916) 324-2641, e-mail [Cary.Huxsoll@boe.ca.gov](mailto:Cary.Huxsoll@boe.ca.gov), or by mail at State Board of Equalization, Attn: Cary Huxsol, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [diane.olson@boe.ca.gov](mailto:diane.olson@boe.ca.gov), or by mail at State Board of Equalization, Attn: Diane Olson, MIC:80, P.O. Box 942879, Sacramento, CA 94279-0080.

### **Alternatives Considered**

The Board must determine that no alternative considered would be more effective in carrying out the purpose for which this action is proposed or be as effective and less burdensome to affected private persons than the proposed action.

### **Availability Of Initial Statement Of Reasons And Text Of Proposed Regulation**

The Board has prepared a statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the internet at the Board's website <http://www.boe.ca.gov>.

### **Availability Of Final Statement Of Reasons**

The final statement of reasons will be made available on the Internet at the Board's Web site following its public hearing of the proposed regulation. It will also be available for your inspection at 450 N Street, Sacramento, California.

### **Additional Comments**

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.